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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

SEP 26 1975

B-164031(1)

The Honorable James R. Jones
House of Representatives

Dear Mr. Jones:

This is in response to your July 16, 1975, letter concerning the ~~administration of the Emergency School Aid Act (20 U.S.C. 1601)~~ by the ~~Office of Education,~~ Department of Health, Education, and Welfare. Specifically, you requested information related to the denial of fiscal year 1975 funds to Independent School District #1 of Tulsa County, Oklahoma.

The primary issues raised in your letter and in later discussions with representatives of this Office concerned whether the Office of Education met its responsibilities under section 710(d)(2) of the act, which states:

"The Assistant Secretary shall not finally disapprove in whole or in part any application for funds submitted by a local educational agency without first notifying the local educational agency of the specific reasons for his disapproval and without affording the agency an appropriate opportunity to modify its application."

Since we received your letter, the school district has filed suit against the Department, claiming that its actions in not approving the application violated section 710(d)(2). Based on our review of the complaint filed with the court and telephone conversations with attorneys in the Department's Dallas Regional Office, it is apparent that the issues now before the court include those raised in your request.

As discussed with you on September 12, 1975, we do not believe further work by us would be appropriate at this time because the school district has sought satisfaction on the issues through the courts. However, as was agreed at that meeting, we have prepared for your use the enclosed summary of information obtained to date.

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The summary is based on information obtained from officials of the school district, the Department's Dallas Regional Office, and the Office of Education in Washington. It is important to note that all contacts with school district and regional office personnel have been by phone, and their comments may be subject to change as the people involved recall additional information about the incidents surrounding the submission and review of the school district's application

We did not obtain formal comments from the agency, but have discussed the summary informally with agency officials.

We trust that the information will satisfy your needs.

Sincerely yours,

(SIGNED) ELMER B. STAATS.

Comptroller General
of the United States

Enclosure

SUMMARY OF INFORMATION OBTAINED
CONCERNING DENIAL OF FY 1975
EMERGENCY SCHOOL AID FUNDS
TO TULSA COUNTY, OKLAHOMA, SCHOOL DISTRICT

BACKGROUND

The Emergency School Aid Act (20 U.S.C. 1601) is administered by the Office of Education (OE), Department of Health, Education, and Welfare (HEW). The act authorizes OE to provide financial assistance to local educational agencies and to public and private nonprofit organizations to meet special needs incident to the desegregation of elementary and secondary schools.

Assistance is available to eligible school systems and nonprofit organizations for instructional services, human relations efforts, and certain other activities related to the process of eliminating, reducing, and preventing minority group isolation, or the operation of an integrated school.

To be eligible for most categories of assistance, activities proposed must be in support of an approved desegregation plan. Several categories of assistance are available, including basic grants to school districts, pilot projects, and grants to nonprofit organizations.

Availability of funds

Congress appropriated \$215 million for program activities in fiscal year 1975. Of that amount, \$185,588,000 was designated for basic grants to school districts, pilot projects, and grants to nonprofit organizations. These funds were allotted to the States, by category, according to a formula set forth in the act.

Under the allotment formula, Oklahoma initially received \$1,754,022. However, any funds not obligated in any State are reallocated, by category, to States in which available funds had been exhausted before all applications meeting minimum program requirements were funded. As a result of the reallocation Oklahoma received an additional \$266,372. Total funds made available to Oklahoma through allotment and reallocation for school year 1975-76 are summarized below.

	<u>Basic grants to school districts</u>	<u>Grants for pilot pro- jects</u>	<u>Grants to nonprofit organiza- tions</u>	<u>Total</u>
Initial allotment	\$ 1,262,080	\$320,848	\$ 171,094	\$ 1,754,022
Reallc- cation	<u>162,594</u>	<u>98,670</u>	<u>5,108</u>	<u>266,372</u>
Total	\$ 1,424,674 =====	\$419,518 =====	\$ 176,202 =====	\$ 2,020,394 =====

All funds made available to Oklahoma were obligated. Additionally, there were applications totalling \$3,065,992 which met minimum program requirements but could not be funded

because funds were unavailable. About \$2.9 million of this amount was for 34 school district basic grant applications; about \$0.1 million was for 3 nonprofit organization applications.

Application and review process

Applications for each type of grant category are given two separate point scores. OE officials assign a statistical score based on the number and percentage of minority students enrolled in the district's schools and the amount of the reduction or prevention of minority group isolation accomplished by the district's desegregation plan. A quality score is given, based on the educational and programmatic quality of the activities for which program funds are being requested. The quality score is determined by a non-Federal review panel, consisting primarily of professional educators.

Minimum quality point scores and minimum composite (quality plus statistical) point scores are established for each program category, and any application not meeting the minimum number of points is rejected. All applications receiving at least the minimum number of points, and which are determined to be eligible under certain other provisions of the act, are funded in rank order according to their composite scores until available funds for each category for each State are obligated.

According to OE officials, applicants not funded initially have an opportunity to resubmit their applications. Section 710(d)(2) of the act states that:

"The Assistant Secretary shall not finally disapprove in whole or in part any application for funds submitted by a local educational agency without first notifying the local educational agency of the specific reasons for his disapproval and without affording the agency an appropriate opportunity to modify its application."

To implement this provision OE allows applicants whose proposals did not meet minimum point requirements to modify their applications and resubmit them for a second cycle of awards. For fiscal year 1975, 20 percent of each State's allotment was reserved to fund applications in this cycle.¹ A notice implementing this policy for fiscal year 1975 was published in 40 Federal Register 20660 (May 12, 1975). It states that:

"Pursuant to section 710(d)(2) of the Act, an application which is thus determined to have insufficient promise of achieving the purposes of the Act [which has been awarded less than the minimum number of points] will be returned to the applicant with the reasons for such determination and such applicant will be given an opportunity to modify its application."

OE officials told us that applications which meet the minimum point requirements but are not initially funded because of insufficient first cycle funds are categorized as "fiscal hold." They told us that these applications can also be modified and resubmitted if applicants want to try to improve their competitive position for the second funding cycle.

¹ In addition to the 20 percent, any unobligated first cycle funds and any funds reallocated from other States are available for the second cycle.

According to OE officials, competition in the second cycle thus includes

- first cycle fiscal hold applications which were not resubmitted and therefore were not rescored, and
- first cycle fiscal hold and rejected applications which were modified and resubmitted and were rescored.

APPLICATION BY TULSA SCHOOL DISTRICT
AND DENIAL OF FUNDS

The school district applied for a basic grant for school year 1975-76. Its original budget request was for \$850,678, but as a result of an administrative budget review by OE, the budget was reduced to \$779,834, with the district's concurrence.

The application ranked fifth out of 41 applications for basic grants, in the first funding cycle. The first cycle allotment for Oklahoma for basic grants was \$1,009,664 (80 percent of \$1,262,080). The first four applications were awarded a total of \$331,845, leaving a balance of \$677,819 when the district's application was reached in rank order.

Because this was not enough to fully cover the district's approved budget, no award was made, and the application was placed in fiscal hold. The remaining funds were put in the second cycle funding pool and the district's application had to re compete in the second round.

In the second funding cycle, \$1,092,829 was available for Oklahoma basic grants--\$677,819 from the first cycle, \$252,416 which had been reserved, and \$162,594 from reallocations from other States.

The district did not modify and resubmit its application, so its original application competed in the second cycle with its original point score. Other districts did modify and resubmit their applications, however, and two of these (Oklahoma City Public Schools and Porter Public Schools) received scores higher than the Tulsa district's application. The Oklahoma City district was awarded a grant of \$1,066,045. The remaining \$26,784 was awarded to the Porter district. The Porter district had been approved at a higher budget, but was given the opportunity to redesign its project to use the remaining funds available to the State.

Therefore, although the Tulsa district's application met minimum point requirements, it was not awarded a grant because all funds available in Oklahoma for basic grants were obligated before the district's application was reached in the rank order funding procedure.

ISSUES SURROUNDING THE TULSA
DISTRICT'S APPLICATION

The Tulsa district has taken issue with OE's grant award procedures as they were applied to its application. The district believes that it should have been allowed to modify its

application at the end of the first round and accept a grant for the \$677,819 left at the end of that funding cycle. On July 22, 1975, the district brought suit against HEW, claiming that HEW's actions in denying it funds were a violation of section 710(d)(2) of the act.¹ The complaint filed with the court contains the following passages:

"***Instead of funding the School District's application to the extent of the available funds, or providing the School District an opportunity to reduce its request to an amount within the available funds, the representatives of the defendant "passed over" the School District's application completely and denied all funding.

"***The action of the representatives of the defendant is in violation of Title 20, U.S.C. 1609 (d) (2) and is arbitrary, capricious and unreasonable."

* * * * *

The District requested the court to "*** find that the denial to the School District of the opportunity to amend its application to reduce its request to the amount of available funds is contrary to law, unreasonable, arbitrary and void."

We were asked to investigate the district's complaints in this regard and to determine whether the district was notified in a timely manner of its right to modify and resubmit its application to improve its competitive position in the second funding cycle. It is apparent, based on telephone conversations with attorneys in HEW's Dallas Regional Office, that both of these issues will be before the court in connection with the district's suit. We were also asked to

¹ Independent School District #1 of Tulsa County, Oklahoma v. Weinberger, Civil No. 75-C-324 (D. Okla., filed July 22, 1975).

determine if personnel in HEW's Dallas Regional Office had any role in setting the level of the district's budget request.

Opportunity to reduce budget request
after first funding cycle

School district officials believe they should have been allowed to accept the funds remaining after the first cycle, even though the amount was not sufficient to fund the entire project. OE officials, however, told us that although this had been done in previous years, it was not the policy in fiscal year 1975.

For the fiscal year 1974 grant awards, the policy was stated in a February 15, 1974, OE administrative bulletin as follows.

***if sufficient funds remain available within the [first round] limitation to support the next highest scoring project at no less than 75% of the approved level, the district may opt to accept this amount, rather than to go into Fiscal Hold for subsequent recompetition. If such a district opts not to accept the reduced award, however, no lower scoring district may be funded--even if its approved level could be met within the [first round] limitation."

OE officials explained that this policy was discontinued in fiscal year 1975 because it tended to provide for quantity rather than quality projects.

To support this policy change, OE officials cited section 710(a)(11) of the act which states that applications for basic grants must involve

***an additional expenditure per pupil to be served,
**of sufficient magnitude to provide reasonable assurance that the desired funds under this title will not be dispersed in such a way as to undermine their effectiveness."

Notification of opportunity to
modify and resubmit application

As discussed previously, OE allows all applicants not awarded grants in the first cycle to modify and resubmit their applications. Tulsa district officials, however, believe they were not given sufficient notice of their first cycle funding status or of their option to resubmit. They said that they did not receive written notice of these options until June 16, 1975, the last day applications could be resubmitted to OE.

According to OE officials, they were operating under an extremely tight timeframe. The program's fiscal year 1975 appropriation was not passed until June 12, 1975. Because of the uncertainty about funding, OE had postponed initiation of the application process until the end of March. Therefore, the entire process was carried out between March and the end of June. In contrast, the fiscal year 1974 grant award process had been carried out between September 1973 and June 1974.

This year first cycle grant award decisions were made between June 4 and 6; all modified applications had to be resubmitted by June 16. OE officials told us they were aware of the problems posed by this tight timeframe. To allow applicants as much time as possible to modify applications, regional office personnel were required to telephone

all fiscal hold projects and projects which did not meet minimum point requirements immediately after first cycle decisions were made. The projects were to be apprised of their funding status and their opportunity to resubmit.

We spoke by phone to the HEW Dallas Regional Office project officer who had contacted the district. He said that, according to a memo in his files, on June 5, 1975, he notified a district official by phone that

--the district's application was in fiscal hold and could be modified and resubmitted, and

--the original application could not be funded unless the budget was reduced in accordance with OE's findings in an administrative budget review.¹

The project officer said that, to the best of his recollection, the district official declined the opportunity to modify and resubmit the proposal, but agreed to make the suggested budget reductions.

We discussed this matter by phone with the district official who received the call. He acknowledged that the project officer contacted him, and that as a result the proposed budget was reduced. However, he did not remember any discussion, then or later, about the fact that the application was in fiscal hold or that the district would have to re compete in the second cycle and could modify its proposal if it so chose.

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According to the project officer, the district could request a hearing if it disagreed with the proposed budget changes.

HEW regional office role in setting
requested budget level

Dallas Regional Office officials we talked to by phone stated that they did not encourage the district to substantially increase its budget request. They said they did recommend that a full time project administrator be appointed, but that, at most, this would have increased project costs by only \$17,000. They said that, on the contrary, they encouraged projects not to substantially increase requests because of the uncertainty about the amount of the fiscal year 1975 appropriation.

We discussed this matter by phone with a school district official. He said that, as best he could recollect, regional office personnel had made no other specific recommendations which would have increased the budget, but that when district officials asked whether certain other additions could be made, they were told to include everything that was necessary and could be justified. Although he did not remember being told not to increase the budget, he said he was not encouraged to increase it.